BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

JEFFREY M. HENSIEK)
Claimant)
VS.	j ,
) Docket No. 199,872
NORTH AMERICAN VAN LINES, INC.)
Respondent)
AND)
)
PLANET INSURANCE COMPANY)
Insurance Carrier)

<u>ORDER</u>

The respondent and its insurance carrier appealed the Award dated December 12, 1997, entered by Assistant Director Brad E. Avery. The Appeals Board heard oral argument on April 15, 1998.

APPEARANCES

Stephen J. Jones of Wichita, Kansas, appeared for the claimant. Gary A. Winfrey of Wichita, Kansas, appeared for the respondent and its insurance carrier.

RECORD AND STIPULATIONS

The record considered by the Appeals Board and the parties' stipulations are listed in the Award. The Appeals Board notes that the record contains two videotapes, one of which is damaged and inoperable. In a May 18, 1998, telephone conference with the parties' attorneys, however, the parties advised both videotapes contained the same material.

ISSUES

The Assistant Director averaged claimant's 49 percent wage loss and 53 percent task loss and found he had a 51 percent permanent partial general disability as the result of a January 23, 1994, accident. The Assistant Director also found the respondent and its insurance carrier could recover from the Workers Compensation Fund a \$6,215.25 overpayment of temporary total disability benefits.

The respondent and its insurance carrier appealed and contend claimant could return to work and earn 90 percent of his pre-injury average weekly wage and that he is trying to manipulate his award.

The only issues before the Appeals Board on this review are:

- (1) What is the nature and extent of claimant's injury and disability?
- (2) Should the temporary total disability benefit overpayment be reimbursed from the Workers Compensation Fund or credited against the award?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Appeals Board finds as follows:

The Appeals Board adopts the findings and conclusions set forth by the Assistant Director in the Award. Therefore, the Appeals Board also concludes that claimant's permanent partial general disability is 51 percent as the result of the injuries he sustained on January 23, 1994.

The Appeals Board, however, finds the Assistant Director erred by finding that the Workers Compensation Fund should reimburse the respondent and its insurance carrier for the overpayment of \$6,215.25 in temporary total disability benefits. Rather, the respondent and its insurance carrier are entitled to credit that amount against the amount due in this Award under K.S.A. 44-525(b), which provides:

(b) No award shall be or provide for payment of compensation in a lump sum, except as to such portion of the compensation as shall be found to be due and unpaid at the time of the award, or except at the discretion of the director on settlement agreements, and credit shall be given to the employer in such award for any amount or amounts paid by the employer to the employee as compensation prior to the date of the award.

Based upon the above, the Award should be modified to allow the respondent and its insurance carrier a credit against the award for the temporary total disability overpayment.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award dated December 12, 1997, entered by Assistant Director Brad E. Avery is modified in the manner set forth above.

Dated this day of May 1	998.
BC	DARD MEMBER
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ВС	DARD MEMBER
BC	DARD MEMBER

c: Stephen J. Jones, Wichita, KS Gary A. Winfrey, Wichita, KS Brad E. Avery, Assistant Director Philip S. Harness, Director

IT IS SO ORDERED.